

Rule 407. Subsequent Remedial Measures.

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- . negligence;
- . culpable conduct;
- . a defect in a product or its design; or
- . a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 407 in order to provide greater clarity regarding the applicable scope of the rule.

Additionally, the language of Rule 407 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the rule. To improve the language of the rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Cases

407.010 The trial court may not admit evidence of a subsequent remedial measure to prove negligence or culpable conduct.

Jimenez v. Wal-Mart Stores, Inc., 206 Ariz. 424, 79 P.3d 673, ¶ 15 (Ct. App. 2003) (plaintiff offered photographs showing various hazards near entrance to defendant's store, contending these refuted defendant's claim of "meticulously well-kept entrance"; because photographs showed that, after plaintiff's injury, defendant had painted curb area of crosswalk red, this was evidence of subsequent remedial measure, which is generally not admissible).

407.020 The purpose of Rule 407 is to encourage remedial measures by freeing a party from concern that evidence of taking of such measures might be used against the party as an admission by conduct.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶ 9 (2010) (truck turned onto highway and after approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; before trial, there was factual dispute whether ADOT knew of decedent's death when it decided to place warning signs near intersection; court held requiring prior knowledge of collision would upset underlying policy that rule was designed to implement because potential defendants would be reluctant to make safety changes for fear of being sued over unknown accidents and would not be afforded protection of rule).

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407.030 Rule 407 applies whenever measures are taken after an event; there is no requirement that the party must have known about the event prior to taking the remedial measures.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 9–16 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; before trial, there was factual dispute whether ADOT knew of decedent's death when it decided to place warning signs near intersection; court held that knowledge of collision was not prerequisite for application of Rule 407, thus whether or not ADOT knew of collision was not relevant).

407.040 Although the trial court may not admit evidence of a subsequent remedial measure to prove negligence or culpable conduct, it may do so for some relevant purpose, such as showing ownership, control, or feasibility of precautionary measures, or for impeachment.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 17–22 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; plaintiff contended evidence of sign and message board should have been admitted for other purpose, i.e., to rebut state's assertions that decedent was comparatively at fault; court held this was just another way to show defendant's negligence, thus rule precluded this evidence).

State of Arizona v. City of Kingman, 217 Ariz. 485, 176 P.3d 53, ¶ 23 (Ct. App. 2008) (plaintiff was injured at intersection collision; city alleged it had no duty to plaintiff because ADOT controlled intersection; although city and ADOT entered into intergovernmental agreement (IGA) for that intersection, they did not do so until 2 years after accident, thus evidence of IGA had no bearing on control of intersection at time of accident).

Sanchez v. City of Tucson, 191 Ariz. 128, 953 P.2d 168, ¶ 17 (1998) (at meeting of city counsel that took place after accident, counsel members discussed installation of traffic light in section of roadway where accident occurred, and one member said there was not yet a solution to traffic problem because either state or city said it was not working; even if this evidence was discussion of subsequent remedial measure, it would have been admissible to show control).

407.045 Although the trial court may not admit evidence of a subsequent remedial measure to prove negligence or culpable conduct, it may do so for some relevant purpose, such as to impeach other party if that party claims the condition was the safest possible.

Johnson v. State Dept. of Transp., 224 Ariz. 554, 233 P.3d 1133, ¶¶ 23–25 (2010) (truck turned onto highway, and after truck traveled approximately 713 feet, it was struck from behind by decedent's vehicle; after collision, ADOT installed truck-crossing sign and variable message board to warn drivers that trucks would be entering highway; defendant made no contention intersection was safest possibility, thus rule precluded this evidence).

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